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Transcript of Proceedings

**ORIGINAL
FILE**

BEFORE THE

Federal Communications Commission

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In the Matter of: :

Docket Number: 92-111 ✓

HEALDSBURG, CALIFORNIA :

-----X

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of: MM Docket No.

HEALDSBURG, CALIFORNIA : 92-111

- - - - - x

The above-entitled matter came on for
prehearing conference pursuant to Notice before Edward
J. Kuhlmann, Administrative Law Judge, at 2000 L
Street, Northwest, Hearing Room Four, Washington, D.C.,
on Tuesday, July 21, 1992, at 10:00 a.m.

APPEARANCES:

On Behalf of Healdsburg Broadcasting:

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On Behalf of Healdsburg Empire Corporation:

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1 APPEARANCES (Continued):

2 On Behalf of Deas Communications, Inc.:

3 LAWRENCE BERNSTEIN, Esquire

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10 On behalf of the Chief, Mass Media Bureau:

11 GARY P. SCHONMAN

12 Federal Communications Commission

13 2025 M Street N.W.

14 Washington, D.C. 20554

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P R O C E E D I N G S

(Time Noted: 9:00 a.m.)

JUDGE KUHLMANN: -- for Healdsburg

Broadcasting, Inc.? No one here. Okay.

For Healdsburg Broadcasting, Inc.? Okay.

Would you just sit down? We have just begun.

MR. JACOBS: Oh, we are a little early,

Judge.

JUDGE KUHLMANN: No, you are a little late.

We begin when I start.

MR. JACOBS: Thanks, Judge.

JUDGE KUHLMANN: For Healdsburg Empire

Corporation?

MR. JACOBS: Jerome Boros -- and Jerold L.

Jacobs.

JUDGE KUHLMANN: I do not see Mr. Boros. He

is not here, is he?

MR. JACOBS: No. I am appearing on his

behalf, as well as on my own.

JUDGE KUHLMANN: Okay. Please be seated.

For the Mass Media Bureau?

MR. SCHONMAN: Good morning, your Honor, Gary

P. Schonman and I'm appearing here on behalf of my

colleague, who is on vacation.

MR. BERNSTEIN: On behalf of Deas

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1 Communication, Your Honor, Lawrence Bernstein and F.
2 Joseph Brinig.

3 JUDGE KUHLMANN: Okay. After this, please
4 come a little earlier, because I was ready to go.

5 We are going to end discovery in this
6 proceeding on September 18, and exhibits will be filed
7 on September 23, or not filed, but exchanged. Do not
8 file them. And on September 25, you will notify
9 everyone about their witnesses, including me, and that
10 will be filed with the Commission. On September 28, if
11 you have any objections to presenting witnesses, you
12 will do it on that day, and then I will decide which
13 witnesses are going to come. On October 5, the hearing
14 will begin.

15 Okay. I this morning have some other matters
16 I want to take up. You know, Mr. Casciato, we got a
17 copy of your Integration Statement, but we never got a
18 stamped copy from the secretary.

19 MR. CASCIATO: That is because, Your Honor, I
20 did not file with the secretary. The rule says, file
21 it with the presiding officer.

22 JUDGE KUHLMANN: No. You must provide it
23 with the secretary.

24 When something is to be filed with me, it is
25 to be filed with the secretary. It is to be addressed

1 to me. So you had better do it.

2 MR. CASCIATO: Okay, Your Honor.

3 JUDGE KUHLMANN: Because there are not any in
4 the docket.

5 MR. CASCIATO: No. I realize that, because I
6 did not do it, Your Honor, I was --

7 JUDGE KUHLMANN: No.

8 MR. CASCIATO: Okay.

9 JUDGE KUHLMANN: Well, it seemed to have been
10 timely. I mean, it is dated June 12, and I assume it
11 was done on time.

12 MR. CASCIATO: Yes, Your Honor.

13 JUDGE KUHLMANN: Well, you should now do it,
14 and do the requisite number of copies that you normally
15 would do with the secretary --

16 MR. CASCIATO: Yes.

17 JUDGE KUHLMANN: -- so that it goes into the
18 docket.

19 MR. CASCIATO: Yes, Your Honor.

20 JUDGE KUHLMANN: I want to go over the
21 motions to compel production of documents that have
22 been filed, and I am going to decide them right now.

23 Okay. The one that Deas has asked for,
24 Healdsburg Empire Corporation.

25 MR. JACOBS: Your Honor, may I address?

1 JUDGE KUHLMANN: Well, I am going to, in a
2 moment. Please, Mr. Jacobs.

3 I have read them, but I am just looking over
4 them again.

5 Why is it, I do not understand what it is
6 that you want, Mr. Bernstein. Tell me, because I am
7 not clear, entirely, here.

8 MR. BERNSTEIN: Simply those documents,
9 Judge, that are referenced specifically in the standard
10 document production order.

11 JUDGE KUHLMANN: Yes, but one of the ones,
12 they did not give you.

13 MR. BERNSTEIN: They did not give us any
14 formational documents at all, although Bylaws are
15 referenced in the Articles of Incorporation for the
16 controlling parent. They did not give us any
17 documents --

18 JUDGE KUHLMANN: So, now, wait a minute. Let
19 us make a list, then.

20 So you want the formation documents for the
21 controlling parent?

22 MR. BERNSTEIN: We got some.

23 JUDGE KUHLMANN: Which ones did --

24 MR. BERNSTEIN: We got the Certification of
25 Incorporation --

1 JUDGE KUHLMANN: And?

2 MR. BERNSTEIN: -- and some amendments to it.

3 JUDGE KUHLMANN: Yes. So you have --

4 MR. BERNSTEIN: That is all we have got.

5 JUDGE KUHLMANN: -- six amendments.

6 MR. BERNSTEIN: Right.

7 JUDGE KUHLMANN: And the minutes.

8 MR. BERNSTEIN: We have got two minutes of
9 meetings, very substantially redacted, with one
10 paragraph each in them.

11 JUDGE KUHLMANN: Why were the minutes
12 redacted, Mr. Jacobs?

13 MR. JACOBS: I do not know, Your Honor.

14 JUDGE KUHLMANN: Well, then produce all of
15 them, unredacted.

16 MR. BERNSTEIN: Further, Your Honor, if I
17 may?

18 The Certificate of Incorporation specifically
19 references Bylaws of the controlling parent. Those
20 were not produced.

21 JUDGE KUHLMANN: Okay. Produce those, Mr.
22 Jacobs.

23 MR. JACOBS: Your Honor, may I respond?

24 JUDGE KUHLMANN: Okay. Why should you not
25 have them?

1 MR. JACOBS: We are not objecting.

2 JUDGE KUHLMANN: Well, you did not produce
3 them.

4 MR. JACOBS: Well, we are in the process of,
5 still in the process of, gathering --

6 JUDGE KUHLMANN: Oh, but they were due. You
7 are long since late.

8 MR. JACOBS: Well, I understand that, but
9 even Deas recently --

10 JUDGE KUHLMANN: Would you like me to take
11 sanctions?

12 MR. JACOBS: Pardon?

13 JUDGE KUHLMANN: Would you like me to take
14 sanctions?

15 MR. JACOBS: We are --

16 JUDGE KUHLMANN: Produce them. By the end of
17 the week. Get the Bylaws. Get the rest of the
18 minutes.

19 What else?

20 MR. BERNSTEIN: Further, Your Honor, of the
21 documents which we assume do exist, that were not
22 produced, there are no documents that establish the
23 claimed enhancement credits of the one integrated
24 principal. There are things --

25 JUDGE KUHLMANN: What would those be, for

1 example?

2 MR. BERNSTEIN: Well, for example, claims of
3 local residence, civic participation, past broadcast
4 experience.

5 JUDGE KUHLMANN: But what kind of documents
6 would they produce to satisfy that?

7 MR. BERNSTEIN: Well, customarily,
8 Your Honor, such things as a driver's license, a birth
9 certificate, a business card establishing employment at
10 radio stations to establish --

11 JUDGE KUHLMANN: People routinely do that?

12 MR. BERNSTEIN: Yes, we do, Your Honor. We I
13 am not saying that they are great evidence, but we do
14 do that. Mr. Casciato has done that. I have done
15 that.

16 JUDGE KUHLMANN: Mr. Jacobs, is there some
17 reason why that cannot be done?

18 MR. JACOBS: No. We indicated in our memo of
19 July 8 to Mr. Bernstein that Ms. Kilmartin is in the
20 process of trying to find her birth certificate, and
21 also gathering those other --

22 JUDGE KUHLMANN: But, but you knew early on
23 that those things were going to have to be exchanged on
24 a certain day, and you should have started before that.

25 MR. JACOBS: Your Honor?

1 JUDGE KUHLMANN: If they are not done by
2 Friday of this week, I will take sanctions against you.
3 I will exclude your integration credit. Okay? So get
4 going. Today is Tuesday.

5 MR. JACOBS: Your Honor, may I respond?

6 JUDGE KUHLMANN: What more is there to
7 respond?

8 MR. JACOBS: Well, there is an implication
9 that we did not give --

10 JUDGE KUHLMANN: There is an implication you
11 did not do what you were supposed to do, yes, and you
12 did not.

13 MR. JACOBS: Well, it takes two to tango. We
14 began our efforts when everybody else began.

15 JUDGE KUHLMANN: No, no, no. You should have
16 begun before hearing designation, because you knew that
17 the minute this was designated that you had to have
18 those documents.

19 I am sorry. There is nothing in our rules
20 that permits you to sit back and wait, and then say
21 that it is too difficult to do within the time.

22 You knew the minute you filed your
23 application you were going to have to produce those
24 documents, and you should have gotten them together at
25 that point.

1 MR. JACOBS: Ms. Kilmartin was not part of
2 the application when it was originally filed.

3 JUDGE KUHLMANN: Well, the minute she became
4 part, you should have gotten them together. That is
5 what you should have done, and you did not do it, so
6 get them done by Friday. There is no excuse for that
7 at all, none whatsoever. It looks to me like you are
8 avoiding discovery.

9 Now, what else?

10 MR. BERNSTEIN: There was one other thing of
11 substance, Your Honor, that comes to mind, and they may
12 not exist, but we have asked for any corporate
13 resolutions from the parent authorizing (A) the
14 funding, because the parent is the funder --

15 JUDGE KUHLMANN: Yes.

16 MR. BERNSTEIN: -- of the subapplicant, and
17 also authorizing Ms. Kilmartin to be the General
18 Manager of the station.

19 Now, they may not exist, but we --

20 JUDGE KUHLMANN: Well, let us find out, right
21 now.

22 Are there?

23 MR. JACOBS: I do not know, Your Honor.

24 JUDGE KUHLMANN: Okay. Let me know, this
25 afternoon, by phone, whether they exist, and let Mr.

1 Bernstein know.

2 MR. JACOBS: And that is resolutions
3 pertaining to funding --

4 MR. BERNSTEIN: Funding and integration.

5 MR. JACOBS: -- and the designation in this
6 case.

7 JUDGE KUHLMANN: Okay. Anything else, Mr.
8 Bernstein?

9 MR. BERNSTEIN: Nothing of substance,
10 Your Honor.

11 JUDGE KUHLMANN: Okay. Those are to be done
12 by Friday.

13 Okay. Now, let us look at those documents
14 which Deas has requested from Healdsburg Broadcasting,
15 Inc.

16 Okay. What are the documents, specifically,
17 that you feel that they have not produced here?

18 MR. BERNSTEIN: Yes, Your Honor. What was
19 produced was half of a balance sheet. Healdsburg --

20 JUDGE KUHLMANN: Well, I have a little
21 trouble with that, because it seemed to me that what
22 they were relying on was just a bank letter, from what
23 I read, that you wrote.

24 MR. BERNSTEIN: No, Your Honor. We were the
25 ones relying on the bank letter. They are relying on

1 an --

2 JUDGE KUHLMANN: Oh.

3 MR. BERNSTEIN: -- individual financing.

4 JUDGE KUHLMANN: Okay. Well then, you have
5 got to provide the balance sheet as it is required in
6 our rules.

7 MR. CASCIATO: Well, I provided the balance
8 sheet that I had, Your Honor.

9 JUDGE KUHLMANN: I know, but that is not.

10 MR. CASCIATO: Okay.

11 JUDGE KUHLMANN: I mean, maybe you had better
12 make up one that is done the way it is done in the
13 rules.

14 MR. CASCIATO: Okay, Your Honor.

15 JUDGE KUHLMANN: Okay? And that, again, by
16 Friday.

17 MR. CASCIATO: Your Honor?

18 JUDGE KUHLMANN: I assume they have one?

19 MR. CASCIATO: Yes. I have the documents,
20 Your Honor. I can get them.

21 JUDGE KUHLMANN: Okay.

22 MR. CASCIATO: Is it possible I could do it
23 by Monday, Your Honor? I would not be back to my
24 office until Monday.

25 MR. BERNSTEIN: That is acceptable,

1 Your Honor.

2 MR. CASCIATO: I could fax it to Mr.
3 Bernstein.

4 JUDGE KUHLMANN: Okay. I want this
5 proceeding to get underway.

6 All right. That is the purpose of having
7 this rule, that we get off to a good start with these
8 things, and the notion that you can sit back and wait
9 until the thing is designated for hearing is just
10 foolishness. I have never heard that, at all.

11 Anyway --

12 MR. BERNSTEIN: May it please Your --

13 JUDGE KUHLMANN: -- what else?

14 MR. BERNSTEIN: The other documents that are
15 called for are related documents which I believe under
16 the cases would also be required, and those are that,
17 to the extent the financing individual who is also a
18 principal is relying on real or personal property to
19 establish his ability, and to the extent these were
20 seen by the voting principals, appraisals, other
21 financing documents for him attesting to his liquidity,
22 and other financing documents shown to the principals
23 prior to the, voting principals prior to certification.

24 JUDGE KUHLMANN: No. I think that the
25 balance sheet is adequate to support the loan, that

1 that is all that he need produce --

2 MR. BERNSTEIN: Very well, Your Honor.

3 JUDGE KUHLMANN: -- at this point, unless
4 there were an issue, and then if there were an issue,
5 we might look at those things, but I do not agree with
6 you, that is what the rule requires.

7 MR. BERNSTEIN: That is all.

8 JUDGE KUHLMANN: Anything else?

9 MR. BERNSTEIN: That is all, Your Honor.

10 JUDGE KUHLMANN: Okay. Good enough. By
11 Monday.

12 Okay. Now, let us take up Healdsburg
13 Broadcasting, Inc.'s request from Deas, and what is it
14 that you want?

15 MR. CASCIATO: Your Honor, I was asking for
16 the underlying documentation that goes with the terms
17 of the bank letter.

18 JUDGE KUHLMANN: Well, again, I think that a
19 financing document is, meant by that is, a bank letter,
20 and that is sufficient, that is adequate, and if a
21 question arises about the bank letter, and then there
22 is an issue, then I think we will explore what lies
23 behind that bank letter, but otherwise I do not think
24 so.

25 MR. CASCIATO: Okay.

1 JUDGE KUHLMANN: Okay?

2 MR. CASCIATO: Thank you, Your Honor.

3 JUDGE KUHLMANN: Now, is the Bureau going to
4 look at the Healdsburg Broadcasting, Inc., corrected
5 amendment?

6 MR. SCHONMAN: Yes, Your Honor. In fact,
7 yesterday the Bureau filed --

8 JUDGE KUHLMANN: Oh.

9 MR. SCHONMAN: -- an opposition to that
10 corrected amendment.

11 JUDGE KUHLMANN: Oh. Okay. Are you going to
12 also comment on the response to the order to show
13 cause?

14 MR. SCHONMAN: Yes. Yesterday, the Bureau
15 filed consolidated comments as well.

16 JUDGE KUHLMANN: Okay, because I have not
17 seen those, we do not have them.

18 MR. SCHONMAN: I am sure you will be getting
19 it in due course.

20 JUDGE KUHLMANN: Okay.

21 MR. SCHONMAN: It's been circulated from the
22 Secretary's office.

23 JUDGE KUHLMANN: That is perfectly all right.
24 Mr. Jacobs?

25 MR. JACOBS: On another matter, when you are

1 done?

2 JUDGE KUHLMANN: Oh. Okay.

3 MR. BERNSTEIN: May it please Your Honor,
4 will you entertain comments from Deas as well?

5 JUDGE KUHLMANN: Yes, sure, but why do you
6 not it as soon as possible, so that?

7 MR. BERNSTEIN: By the end of the week, at
8 the latest.

9 JUDGE KUHLMANN: Yes. Okay. Well, the due
10 date, I think, on those, is, well, by the end of the
11 week would be good.

12 MR. BERNSTEIN: Thank you, Your Honor.

13 JUDGE KUHLMANN: Okay. Mr. Jacobs?

14 MR. JACOBS: Your Honor, earlier on, you
15 asked why we had redacted the minutes of the board
16 meetings, and why --

17 JUDGE KUHLMANN: And you said you did not
18 know.

19 MR. JACOBS: Pardon?

20 JUDGE KUHLMANN: You said --

21 MR. JACOBS: I said that I did not know, but
22 the answer is provided in the cover memo which
23 accompanied the documents, which said --

24 JUDGE KUHLMANN: Yes, but see, I do not have
25 that.

1 MR. JACOBS: It is dated July 8, addressed to
2 Mr. Bernstein, and it says, please note that I have
3 supplied only those portions of minutes of meetings of
4 directors and stockholders of Empire Broadcasting
5 Corporation which relate to the Healdsburg application.
6 Irrelevant portions of the minutes have been redacted.

7 I infer from that that the parts that are
8 redacted relate to other corporate matters which have
9 nothing to do with Healdsburg, and I should think that,
10 under the general concepts of confidentiality --

11 JUDGE KUHLMANN: Oh, I do not agree with
12 that. Bring him all the minutes.

13 There is no confidentiality in a public
14 proceeding. I never heard of that.

15 This is a public proceeding, and if you
16 decide to enter a public venue to get a license that
17 the Federal Government hands out, you have to give up
18 some of your secrets, if you think they are secrets.
19 That is that.

20 Okay. Now, let me make sure I have got
21 everything done here.

22 MR. JACOBS: Your Honor, a scheduling
23 question, if I may?

24 JUDGE KUHLMANN: Sure?

25 MR. JACOBS: How many days do you envision

1 the hearing will --

2 JUDGE KUHLMANN: I have no idea. I do not
3 know how many witnesses you are going to call.

4 MR. JACOBS: The hearing is schedule to begin
5 on --

6 JUDGE KUHLMANN: October 5.

7 MR. JACOBS: -- Monday, October 5.
8 Wednesday, October 7, is Yom Kippur.

9 JUDGE KUHLMANN: Oh, dear. I do not schedule
10 these, you know --

11 MR. JACOBS: Yes.

12 JUDGE KUHLMANN: -- so I did not know, but we
13 clearly will not go on on that day, no question about
14 it.

15 In fact, I would prefer to move the hearing
16 to another week, so that we can finish it, but I wonder
17 if it will go more than two days, for example? I do
18 not know. I mean, you are in a better position to know
19 the answer to that.

20 Before we move it, why do you not, how many
21 principals, conceivably, do you have?

22 MR. JACOBS: I believe we have one.

23 MR. BERNSTEIN: We have one voting principal,
24 as well, Your Honor.

25 MR. CASCIATO: We have one, Your Honor.

1 JUDGE KUHLMANN: It is conceivable we could
2 do it in two days.

3 Why do we not wait? Why do we not continue
4 on the schedule that we have got, and then, when it
5 gets within a month of the hearing, by the time you
6 have completed discovery, it looks like there are going
7 to be many witnesses, why do you not tell me, and then
8 we will move it a week? But only a week. Okay?

9 MR. JACOBS: I might point out that even the
10 second Tuesday would be a shortened day, so we are
11 really I think only talking about a day-and-a-half.

12 JUDGE KUHLMANN: Well then, we will move it a
13 week sooner, I guess we could.

14 MR. BERNSTEIN: That is Rosh Hashanah, the
15 Jewish New Year, Your Honor.

16 JUDGE KUHLMANN: I keep forgetting that it is
17 late this year, and I did not look at the calendar.

18 MR. BERNSTEIN: I should have --

19 MR. JACOBS: The previous Monday and Tuesday,
20 September 29 and 30, Rosh Hashanah --

21 JUDGE KUHLMANN: Yes.

22 MR. JACOBS: -- and then the Wednesday of the
23 following week is Yom Kippur.

24 JUDGE KUHLMANN: Well, it is conceivable that
25 we could easily do this hearing in two days. I seldom

1 have a hearing go more than two days, with three
2 parties, I mean, especially when there are only three
3 witnesses.

4 I am hesitant to move it, but I obviously
5 would not want to do it on a holiday.

6 MR. CASCIATO: Can we keep it, Your Honor,
7 just --

8 JUDGE KUHLMANN: Well, I guess we could take
9 Wednesday off, and then come back on Thursday. Is that
10 acceptable?

11 MR. BERNSTEIN: Yes, Your Honor. There will
12 be a lot of people here from California, if Mr.
13 Casciato does not care about that.

14 MR. CASCIATO: I am going to be here anyway,
15 Your Honor. I do not mind staying.

16 JUDGE KUHLMANN: Okay.

17 MR. BERNSTEIN: That is acceptable to us.

18 JUDGE KUHLMANN: Let me think about it.

19 Where would be the next day that we could
20 begin the hearing, and run for, say, three days, Mr.
21 Jacobs?

22 MR. JACOBS: Well, I guess Monday, October
23 12, I think, is Columbus Day.

24 MR. BERNSTEIN: Yes.

25 MR. JACOBS: So if we began the Thirteenth,

1 then I think, I mean, I am putting aside, there are
2 other Jewish holidays which I personally observe.

3 JUDGE KUHLMANN: Yes, I know. Are you
4 personally going to do this hearing, though?

5 MR. JACOBS: Probably Mr. Boros.

6 JUDGE KUHLMANN: Well, what days does he
7 observe? He is not here, is he? It is pretty hard to
8 know what he thinks.

9 MR. JACOBS: Well, let me try --

10 JUDGE KUHLMANN: He should comment, if he has
11 an interest.

12 What about the --

13 MR. JACOBS: The Fourteenth, Fifteenth, and
14 Sixteenth, would be --

15 JUDGE KUHLMANN: Okay.

16 MR. JACOBS: -- perfectly agreeable to me,
17 as --

18 JUDGE KUHLMANN: Well, but you are not going
19 to do the hearing.

20 MR. JACOBS: Yes, well, I mean, what I am
21 trying to say is, there are no Jewish holidays on those
22 days.

23 JUDGE KUHLMANN: Okay.

24 MR. JACOBS: The Fourteenth, Fifteenth --

25 JUDGE KUHLMANN: Good enough.

1 MR. JACOBS: -- and Sixteenth.

2 JUDGE KUHLMANN: Let us do it. Let us do it
3 now, and then we will not have to worry about it.

4 Yes?

5 MR. BERNSTEIN: May I agree, subject to check
6 with the client, Your Honor? They have planned on the
7 Fifth, for a long time. I do not think they have a
8 problem with the following week.

9 Can I call you and the parties if there is a
10 problem with the Fourteenth?

11 I have no reason to think there is.

12 JUDGE KUHLMANN: Let me just hold off. I am
13 not going to change the other dates. I am going to
14 keep them the same.

15 Let us hold off, and assume we are going to
16 do it on the Fifth. I do not know whether Mr.
17 Casciato's client is going to be here, because I am
18 still tussling with that engineering issue, and now you
19 have had three strikes at it. You know what happens.

20 And so, I will just have to wait, and take a
21 look at it, but if there are only two parties, it seems
22 to me that we easily can do this hearing in two days,
23 and I would just as soon do it I guess when it is
24 scheduled, not because I chose that day, but because
25 then it will be finished.

1 But otherwise, we will move it to days that
2 are acceptable to you, Mr. Jacobs, and you need not
3 concern yourself that we would do it --

4 MR. JACOBS: I would appreciate that.

5 JUDGE KUHLMANN: -- on a day that would not
6 be.

7 Absolutely. And I do not know, the Chief
8 Judge sets these. I should think he would have been
9 aware of it, but sometimes you just do not look at the
10 calendar, and you do not think about it, and I did not.
11 I did not look at the calendar at all. I just accepted
12 it. I am a good soldier.

13 But we will move it, if we have to, and if we
14 do not have to, we will not. Okay? Good enough.

15 Are there any other matters? Yes, Mr.
16 Schonman?

17 MR. SCHONMAN: There is an areas in pops
18 issue. I was wondering if you would set a date for --

19 JUDGE KUHLMANN: Sure.

20 MR. SCHONMAN: -- submission of a preliminary
21 engineering statement?

22 JUDGE KUHLMANN: Okay. Just a moment.
23 What about doing that by the Fourth of
24 September?

25 MR. SCHONMAN: That would be fine,